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8 **BEFORE THE**  
**CALIFORNIA BOARD OF OCCUPATIONAL THERAPY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. OT-7728

12 **BEGANSKY, KIMBERLY**  
1529 W. 223rd Street  
13 Torrance, CA 90501  
Occupational Therapist

**A C C U S A T I O N**

14 License No. OT-7728

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Heather Martin (Complainant) brings this Accusation solely in her official capacity as  
20 the Executive Officer of the California Board of Occupational Therapy, Department of Consumer  
21 Affairs.

22 2. On or about July 19, 2004, the California Board of Occupational Therapy (Board)  
23 issued Occupational Therapist License Number OT-7728 to Kimberly Begansky (Respondent).  
24 The Occupational Therapist License was in full force and effect at all times relevant to the  
25 charges brought herein and will expire on July 31, 2010, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 480 states, in pertinent part:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

"(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

5. Section 490 provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

6. Section 2570.28 states:

"The board may deny or discipline a licensee for any of the following:

"(a) Unprofessional conduct . . . .

"(e) Conviction of a crime or of any offense substantially related to the qualifications, functions, or duties of a licensee, in which event the record of the conviction shall be conclusive evidence thereof.

"(o) Committing any act that would be grounds for denial of a license under Section 480."

7. Section 2570.29 states, in pertinent part:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter, it is unprofessional conduct for a person licensed under this chapter to do any of the following:

.....

1       "(b) Use to an extent or in a manner dangerous or injurious to himself or herself, to any  
2 other person, or to the public, or that impairs his or her ability to conduct with safety to the public  
3 the practice authorized by his or her license, of any of the following:

4       ....  
5       "(3) Alcoholic beverages."

6       8. Section 2570.30 of the Code states:

7       "The board shall retain jurisdiction to proceed with any investigation, action or disciplinary  
8 proceeding against a license, or to render a decision suspending or revoking a license, regardless  
9 of the expiration, lapse, or suspension of the license by operation of law, by order or decision of  
10 the board or a court of law, or by the voluntary surrender of a license by the licensee."

11                                   **COST RECOVERY**

12       9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
13 administrative law judge to direct a licensee found to have committed a violation or violations of  
14 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
15 enforcement of the case.

16                                   **FIRST CAUSE FOR DISCIPLINE**

17                                   **(Convictions of Substantially-Related Crimes)**

18       10. Respondent is subject to disciplinary action under section 490, and section 2570.28,  
19 subdivision (a), as a result of Respondent's convictions of crimes that are substantially related to  
20 the qualifications, functions, and duties of a licensed occupational therapist.

21       a. On or about April 24, 2009, after pleading nolo contendere, Respondent was  
22 convicted of one misdemeanor count of violating Penal Code section 23152, subdivision (b)  
23 [driving with a blood-alcohol content greater than .08%], and one misdemeanor count of violating  
24 Penal Code section 14601.2, subdivision (a) [driving with a suspended license], in the criminal  
25 proceeding entitled *The People of the State of California v. Kimberly Anne Begansky* (Super. Ct.  
26 Los Angeles County, 2009, No. 9LT00556).<sup>1</sup> The underlying factual circumstances occurred on

27       \_\_\_\_\_  
28       <sup>1</sup> Complainant has not yet received the sentencing information related to this case.

1 or about April 11, 2008, when officers of the Long Beach Police Department stopped Respondent  
2 for making an illegal left-hand turn in her vehicle. They arrested her after observing objective  
3 signs of intoxication and obtaining an admission from Respondent that she had consumed half a  
4 pint of Vodka earlier that day. After booking, Respondent gave a breath sample, which yielded a  
5 blood-alcohol content level of .25%, more than three times the legal limit.

6 b. On or about January 13, 2009, after pleading nolo contendere, Respondent was  
7 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a)  
8 [driving under the influence of alcohol] in the criminal proceeding entitled *The People of the*  
9 *State of California v. Kimberly Anne Begansky* (Super. Ct. Los Angeles County, 2009, No.  
10 8SY09541).<sup>2</sup> The underlying factual circumstances occurred on or about October 7, 2008, when  
11 officers of the Redondo Beach Police Department responded to a vehicle collision call involving  
12 a possibly intoxicated driver. When they arrived on the site, they found Respondent passed out  
13 behind the wheel of her car. When the officers asked her to step out of the car, she was stumbling  
14 and needed help. Respondent provided breath samples in a preliminary alcohol screen result,  
15 which yielded blood-alcohol content level results of .31% and .32%, approximately four times the  
16 legal limit. Based on the preliminary blood-alcohol content test results, and Respondent's poor  
17 performance on field sobriety tests, the officers placed Respondent under arrest.

## 18 SECOND CAUSE FOR DISCIPLINE

### 19 (Unprofessional Conduct -- Dangerous Use of Alcohol)

20 11. Respondent is subject to disciplinary action under section 2570.28, subdivision (a),  
21 and section 2570.29, subdivision (b), as a result of Respondent's use of alcohol in a manner that  
22 was dangerous to herself and others. Complainant refers to and incorporates all the allegations  
23 contained in paragraph 10, including its subparagraphs, as though set forth fully.

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28 <sup>2</sup>

Complainant has not yet received the sentencing information related to this case.

1 THIRD CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct – Failure to Respond to Board Inquiries)

3 12. Respondent is subject to disciplinary action under section 2570.28, subdivision (a), as  
4 a result of Respondent's failure to respond to Board inquiries regarding her October 7, 2008 arrest  
5 for driving under the influence of alcohol. This failure to respond constitutes unprofessional  
6 conduct. Board Enforcement Technician David Russwinkle sent Respondent written requests for  
7 detailed information and certified court documents related to her October 7, 2008 arrest on the  
8 following dates: (1) October 9, 2008; (2) November 5, 2008; and (3) December 3, 2008. The  
9 third and final request of December 3, 2008, was sent by United States Certified Mail, Article No.  
10 7008-1140-0000-2678-0673. A signed receipt for this certified mail, bearing Respondent's  
11 signature and indicating a delivery date of December 5, 2008, was returned to the Board on or  
12 about December 9, 2008. Respondent never provided the requested response.

13 FOURTH CAUSE FOR DISCIPLINE

14 (Committing Acts That Would Be Grounds for License Denial)

15 13. Respondent is subject to disciplinary action under section 2570.28, subdivision (o), in  
16 conjunction with section 480, subdivision (a)(1), as a result of Respondent's convictions for  
17 driving under the influence, acts that would result in the denial of a license. Complaint refers to  
18 and incorporates all the allegations contained in paragraph 10, including its subparagraphs, as  
19 though set forth fully.

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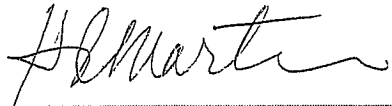
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Occupational Therapist License Number OT-7728, issued to Respondent;
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: July 23, 2009

  
HEATHER MARTIN  
Executive Officer  
California Board of Occupational Therapy  
Department of Consumer Affairs  
State of California  
*Complainant*

LA2009603004